

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
EASTERN DIVISION**

ROGER WALDNER,

Movant,

vs.

UNITED STATES OF AMERICA.

No. C10-1003-LRR  
No. CR06-1019-LRR

ORDER

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This matter appears before the court on Roger Waldner's motion to vacate, set aside or correct sentence pursuant to 28 U.S.C. § 2255 (docket no. 1). Roger Waldner ("the movant") filed such motion on February 10, 2010.

The court conducted the required review under Rule 4(b) of the Rules Governing Section 2255 Proceedings and concludes that summary dismissal of the movant's § 2255 motion is not appropriate at this time. *See Blackledge v. Allison*, 431 U.S. 63, 75-76, 97 S. Ct. 1621, 52 L. Ed. 2d 136 (1977) (making clear that summary dismissal is appropriate where the allegations are vague or conclusory, palpably incredible, or patently frivolous or false). Accordingly, the government is directed to file either an answer in accordance with Rule 5(b) of the Rules Governing Section 2255 Proceedings or an appropriate motion under Federal Rule of Civil Procedure 12 by no later than July 9, 2010. *See* Rule 4(b) of the Rules Governing Section 2255 Proceedings. If the government elects to file an answer, the movant may file a reply by no later than July 23, 2010. *See* Rule 5(d) of the Rules

Governing Section 2255 Proceedings.<sup>1</sup> In the event that an answer is filed by the government, the court will establish by subsequent order a briefing schedule.

**IT IS SO ORDERED.**

**DATED** this 10th day of June, 2010.



LINDA R. READE  
CHIEF JUDGE, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF IOWA

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<sup>1</sup> The court notes that, as a general matter, a movant may not bring up new matters in a reply brief. *See McGhee v. Pottawattamie County*, 547 F.3d 922, 929 (8th Cir. 2008); *Barham v. Reliance Std. Life Ins. Co.*, 441 F.3d 581, 584 (8th Cir. 2006); *see also* N.D. Iowa L. R. 7(g) (allowing a reply brief to be filed within 7 days after a responsive pleading is filed and explaining that a reply may assert newly-decided authority or respond to new or unanticipated arguments).